IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE TWENTY EIGHTH DAY OF FEBRUARY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE K.C. BHANU

WRIT PETITION NO : 20032 of 2004

Between:

M. Murali Krishna, S/o. Late Jayaram,
E.No. 40270, R/o. 1-8-375, Chikkadpally, Hyderabad.

..... PETITIONER

AND

1 APSRTC, Musheerabad, Hyderabad. Rep. by its Managing Director.
2 APSRTC, Bus Depot, Bodhan, Nizamabad District, Rep. by its Depot Manager.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue an appropriate Writ or direction particularly one in the nature of WRIT OF CERTIORARI, quash the impugned proceeding No.E1/(5)/04-BDN dt. 19-10-2004 as arbitrary, unjust, in violation of Art. 14, 16 & 21 of the Constitution of India and also in violation of Reg.12(2) of the C.C & A., Reg. APSRTC 1967 and consequently direct the respondents to reinstate the petitioner into service along with all consequential benefits in the interest of justice and fair play.

Counsel for the Petitioner: MR.V.NARASIMHA GOUD

Counsel for the Respondents: MR.V.T.M.PRASAD, S.C. for APSRTC

The Court made the following :

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ORAL ORDER:

This writ petition is filed challenging the Proceedings No.E1/1(5)/04-BDN, dated 19.10.2004 passed by the 2nd respondent-Depot Manager and to quash the same.

The brief facts that are necessary for the disposal of the writ petition may be delineated as follows:

The case of the petitioner is that he was removed from service by the 2nd respondent on the flimsy ground that he was absent from duty from 6.8.2004 to 10.8.2004 and again from 16.10.2004 to 19.10.2004. When the petitioner was removed from service, he was not given any opportunity either by way of charge sheet or enquiry while considering the period of his absence from 16.10.2004 to 19.10.2004. According to the petitioner, he was suffering from chest pain and he could not attend to his duty. It is stated that he explained to the 2nd respondent that he was suffering from chest pain and requested that he might be granted leave for the said period. The second charge levelled against the petitioner is very vague and therefore, the same is not tenable. An enquiry was conducted wherein he deposed that owing to chest pain, he took treatment from his own medical attendant from 6.8.2004 at Hyderabad and

submitted a medical certificate to that effect to the 2nd respondent. On 16.8.2004, when he received a message that his daughter was suffering from serious gynic problem he went to Mahaboobnagar and admitted her in the hospital and he could not be in a position to attend to his duties from 16.10.2004 to 19.10.2004. There exists a reasonable cause for the petitioner for not attending to his duties and it does not amount any misconduct. Hence, the writ petition has been filed.

The respondents filed counter affidavit stating that the petitioner was absent from duty from 6.8.2004 to 10.8.2004 without any authorization, therefore, he was issued a charge sheet dated 18.8.2004. The petitioner requested the respondents to allow him to duty to improve his attendance. An enquiry was conducted by the Assistant Manager (Traffic), Bhodan who submitted a report holding that the charges leveled against the petitioner are proved. A further show cause notice was issued to him on 6.9.2004. The petitioner did not produce any evidence of chest pain or any medical certificate to that effect.

In the reply affidavit, the petitioner stated that the ground raised by him was not answered by the respondents. The petitioner was treated that he was absent from duty from 6.8.2004 to 10.8.2004 and he reiterated the same.

Heard the learned counsel for both the parties and perused the material on record.

The learned counsel for the petitioner has contended that the order of removal shows that because of unauthorized absence from duty from 16.10.2004 to 19.10.2004, the petitioner was removed from service which is not the subject matter of the charge; and as the period of absence from 6.8.2004 to 10.8.2004 was condoned one more opportunity was given to the leading hand to perform his duties punctually, but he failed to perform his duties. Therefore, the order is in violation of principles of natural justice and he prays to set aside the same.

On the other hand, the learned standing counsel for the respondents has contended that an alternative remedy is provided for under the regulations to file an appeal before the Divisional Manager and the entire impugned proceedings would clearly go to show that the disciplinary authority applied its mind only with regard to the absence of the petitioner from 6.8.2004 to 10.8.2004. Hence, the order under challenge does not suffer from any legal infirmities so as to call for interference by this Court.

As seen from the impugned proceedings of the Depot Manager, dated 19.10.2004, a charge sheet has been issued and a specific charge has been framed which reads thus:

> *"For having absented to your duties unauthorizedly from 6.8.2004 to 10.8.2004 without any intimation and without any prior sanction of leave, resulting in which the scheduled maintenance work is dislocated and inconvenience to the traveling public and loss of revenues to the Corporation, which comes under misconduct in terms of Regulation 28, Sub-clause (xxvii) of APSRTC Employees (conduct) Regulations, 1973".*

For the above charge, the petitioner submitted an explanation. As his explanation was not satisfactory a detailed regular departmental enquiry was conducted C.I., Bodhan Depot who was nominated as Enquiry Officer. Based on the evidence on record, the Enquiry Officer submitted a report on 4.9.2004. In view of the findings and also the material available on record, the disciplinary authority passed the impugned order. No doubt, it is mentioned that in the impugned proceedings one more opportunity was given to the leading hand to perform his duties punctually, but he failed to do so. It does not mean that the period of absence from 6.8.2004 to 10.8.2004 has been condoned. It only shows that if the petitioner had discharged his duties punctually, the disciplinary authority would have condoned the earlier charge so that no punishment would have been imposed. The other grievance of the petitioner is shown in the impugned order which reads *"further, he is remained under unauthorized absence from 16.10.2004 to 19.10.2004 (till date). Hence, the penalty*

proposed is fit and proper to be imposed on him". Based on the said observation, the learned counsel for the petitioner has contended that the punishment imposed relates to the petitioner's absence from 16.10.2004 to 19.10.2004, but this Court is unable to accept the same. If the entire proceedings of the Depot Manager have been read it would go to show that the Depot Manager will have to take into consideration the absence of the petitioner from duties from 6.8.2004 to 10.8.2004 but not from 16.10.2004 to 19.10.2004. Therefore, the order under challenge does not suffer from any legal infirmities so as to call for interference by this Court.

The learned counsel for the petitioner has relied upon a decision reported in **SUR ENAMEL & STAMPING WORKS Vs. THEIR WORKMEN** wherein it is held to the following effect:

> *"It appears that the charge sheet which was sent to Manik on 23rd October 1959 did not mention any charge of "willful insubordination or disobedience." It is quite clear that the domestic tribunal did not find him guilty of any insubordination or disobedience. It is difficult to understand how the charge being for causing damage to property and the enquiry officer's report being in respect of the same, the dismissal order was made for something else. That itself would be a sufficient ground for setting aside the order of dismissal."*

There is no dispute about the proposition of law laid down, but in this case, the Enquiry Officer's report is for the absence of the petitioner from 6.8.2004 to 10.8.2004 and the dismissal is also for the same period. Incidentally, it might have been mentioned that he was also absent from 16.10.2004 to 19.10.2004 which in my considered opinion, does not suffer from the violation of principles of natural justice. The petitioner has got an alternative remedy of filing an appeal before the Depot Manager. It is not a case of violation of principles of natural justice or infringement of any fundamental right or the lack of jurisdiction of the authority who passed the impugned.

For the foregoing reasons, the writ petition is disposed of with a direction to the petitioner to file an appeal before the appropriate appellate authority. In the circumstances of the case, there shall be

no order as to costs.

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(K.C. BHANU, J.)

28th February, 2005.

bcj

To

1 The Managing Director, APSRTC, Musheerabad, Hyderabad.
2 The Depot Manager, APSRTC, Bus Depot, Bodhan, Nizamabad District,

3. Two C.D. copies